

**Robbins Geller
Rudman & Dowd LLP**

Chicago Melville Nashville San Diego Wilmington
Boca Raton Manhattan Philadelphia San Francisco Washington, D.C.

Stephen R. Astley
sastley@rgrdlaw.com
561-961-2235

MEMO ENDORSED

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/7/2025

January 3, 2025

VIA ECF

The Honorable Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square, Room 240
New York, NY 10007

Re: Request to consolidate *McKinney v. Morgan Stanley*, No. 1:24-cv-08860-VEC
(S.D.N.Y.) and *Gagner v. Morgan Stanley*, No. 1:24-cv-09875-VEC (S.D.N.Y.)

Dear Judge Caproni:

Plaintiffs and Defendants in the above-captioned actions (collectively, “Parties”) write jointly to respectfully request that the actions be consolidated pursuant to Rule 42(a) of the Federal Rules of Civil Procedure.

On November 20, 2024, Plaintiff Mark E. McKinney filed a Class Action Complaint (ECF 1) against three affiliated financial institutions, Morgan Stanley, Morgan Stanley Smith Barney LLC, and E*TRADE Securities LLC (“E*TRADE”) (collectively, “Defendants”). The *McKinney* action involves “cash sweep” programs that Defendants are alleged to have provided to Plaintiff McKinney and other E*TRADE account holders. The programs are alleged to have swept idle customer cash deposits into interest-bearing accounts at a network of banks, including banks affiliated with Defendants. *McKinney* alleges that Defendants violated their contractual and fiduciary obligations and other state and federal laws by paying unreasonably low interest rates on customer cash swept into the sweep program bank accounts. *McKinney* was referred to Your Honor on November 21, 2024.

On December 21, 2024, another E*TRADE account holder, Plaintiff Neal Gagner, filed a Class Action Complaint (ECF 1) similar to the one in *McKinney*. *Gagner* brings the same legal claims against the same Defendants as *McKinney* relating to the same cash sweep programs. Accordingly, Plaintiff Gagner designated *Gagner* as related to *McKinney* in a Related Case Statement filed on December 21, 2024. ECF 6. *Gagner* was referred to Your Honor on December 23, 2024.

Under Rule 42(a), actions may be consolidated if they “involve a common question of law or fact.” *McKinney* and *Gagner* should be consolidated under Rule 42(a) because, as described above, both

**Robbins Geller
Rudman & Dowd LLP**

The Honorable Valerie E. Caproni.

January 3, 2025

Page 2

are putative class actions involving the same legal claims against the same Defendants relating to the same cash sweep programs provided to account holders of E*TRADE. Litigating the actions separately would create substantial duplication of effort and expense and risk conflicting rulings.

In light of the above, the Parties respectfully request that Your Honor consolidate *McKinney* and *Gagner* by “So Ordering” this letter. We thank the Court for its attention this matter.

Respectfully submitted,



STEPHEN R. ASTLEY

SRA:

cc: Brian S. Weinstein (counsel for Defendants)
Jonathan K. Chang (counsel for Defendants)

So Ordered: _____
Hon. Valerie E. Caproni

Application GRANTED. *McKinney v. Morgan Stanley et al.*, 24-cv-8860 ("*McKinney*"), is hereby consolidated with *Gagner v. Morgan Stanley et al.*, 24-cv-9875 ("*Gagner*"). *McKinney* will be the controlling case for the two consolidated cases. No further filings shall be made in *Gagner*. The deadline for Plaintiffs to file a post-consolidation amended complaint is **Tuesday, January 14, 2025**.

The Proposed Intervenor's motion to intervene and transfer (Dkt. 25) is DENIED AS MOOT on the ground that the complaint it addresses is no longer operative. The Proposed Intervenor may file a revised motion to intervene and transfer not later than **Tuesday, February 4, 2025**. If such a motion is filed, oppositions must be filed not later than **Tuesday, February 18, 2025**, and replies must be filed not later than **Tuesday, February 25, 2025**.

The deadline for Defendants to answer or otherwise respond to the amended complaint is ADJOURNED *sine die* pending resolution of the motion to intervene and transfer; if no such motion is filed, Defendants must answer or otherwise respond to the amended complaint not later than **Tuesday, February 25, 2025**.

The Clerk of the Court is respectfully directed to terminate the open motions at Dkts. 25 and 33 in *McKinney* and Dkt. 12 in *Gagner*, to close *Gagner*, and to consolidate *Gagner* with *McKinney*.

SO ORDERED.

 1/7/2025

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE